200-1
Persons wishing to file a complaint may file a complaint with the county or may contact the California Department of Social Services in writing or by calling toll free 1-800-952-5253. They may also file a complaint by contacting the welfare department in the county in which they reside. The complaint shall be handled in accordance with Division 22-100. (§63-106.1)

200-2
State law provides that eligibility of all FS households shall be determined in accordance with federal law. (W&IC §18901)

200-3
State hearings under the FS Program shall be conducted in accordance with the provisions of Division 22. (§63-804.1)

200-4
In the FS Program, all state hearings shall be decided or dismissed and the claimant and the county notified of the decision within 60 days from the date of the request for a state hearing except when the claimant waives such requirement, or withdraws or abandons the request for hearing. (§22-060.11)

200-5
For purposes of this decision, W&IC is the abbreviation for the Welfare & Institutions Code.

200-6
Federal regulations deal with the FS household's rights during the hearing. These rights include, but are not limited to the following:

> The household or its representative must be given adequate opportunity "to examine all documents and records to be used at the hearing at a reasonable time before the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the state agency to establish the household's ineligibility or eligibility and allotment shall be made available", although certain confidential information is protected from release. The agency shall provide free copies of relevant portions of the case file on request. "Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decisions." [Emphasis added]

(7 Code of Federal Regulations §273.15(p)(1))

200-7
In the FS program, decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. (7 Code of Federal Regulations

(CFR) §273.15(q)(1))

"A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations." (7 CFR §273.15(q)(2))

201-1
If a household believes that it is entitled to restoration of lost benefits but the county does not agree, the household has 90 days from the date of the county determination to request a state hearing. The county shall restore lost benefits to the household only if the state hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the county was initially informed of the household's possible entitlement to lost benefits shall not be restored. (§63-802.42)

201-2
A household shall be allowed to request a hearing on any action by the county or loss of benefits which occurred within the prior 90 days. In addition, at any time within a certification period, a household may request a state hearing to dispute its current level of benefits. (§63-804.5) If a household believes that it is entitled to restoration of lost benefits but the county does not agree, the household has 90 days from the date of the county determination to request a state hearing. (§63-802.42)

201-3
Federal regulations provide that a household shall be allowed to request a hearing on any action by the state agency or loss of benefits which occurred in the prior 90 days. Action by the state agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits. (7 Code of Federal Regulations (CFR) §273.15(g))

201-4
An FS notice shall be considered adequate if it explains in easily understandable language the proposed action, the reason for the proposed action, the household's right to request a state hearing, the availability of continued benefits, and the potential liability of the household for any overissuance received while awaiting a state hearing, if the hearing decision is adverse to the household. The notice must also contain the telephone number that an individual may contact for additional information. For households living outside the local calling area, the notice shall contain a toll-free number or a number where collect calls will be accepted. An adequate notice must also advise the household of the availability of free legal representation, if any. (§63-504.211)

201-5
A request for state hearing must be filed within 90 days of the action or inaction with which the claimant is dissatisfied. In the Food Stamp Program, the appropriate time limits are set forth in §§63-802.4 and 63-804.5. If the claimant received adequate notice of the

action, the date of the action is the date the notice was mailed to the claimant. (§22-009.1)

201-8
The Notice of Action sent when the household fails to file a CA 7 by the 11th of the report month or files an incomplete CA 7 shall include:

(a) That the CA 7 is overdue or incomplete.

(b) What the household must do to complete the CA 7.

(c) What verification is missing and the effect on the household's benefit level.

(d) That the SSN of a new member must be reported.

(e) The extended filing date.

(f) That the county will assist the household in completing the report.

(§63-504.271)

201-9
When the county has determined that a work registrant has voluntarily quit a job without good cause, it shall notify the household of the proposed disqualification within 10 days of that determination. In addition to the requirements of §63-504.21, the notice shall:

1. Explain the reason for the proposed disqualification.

2. Specify that the sanction period shall begin the first of the month following the month the registrant is provided timely notice and shall continue for the period mandated by §63-407.53.

3. Explain the actions which may be taken to end the disqualification and the conditions under which the registrant may reapply.

4. Inform the registrant of the right to request a state hearing; that continued participation shall be in accord with §63-804.6; and inform the registrant that if benefits are continued pending the hearing, and the county determination is upheld, the disqualification period begins the first of the month after the hearing decision is rendered.

(§63-408.21)

201-10
The Notice of Action approving benefits shall advise the household of the amount of the allotment, the beginning and ending dates of the certification period and any anticipated

variations in the benefit level based on changes anticipated at the time of certification. (§63-504.221)

201-11
The Notice of Action which informs the household of the expiration or shortening of the certification period shall advise the household of the following:

(a) The date the certification period ends.

(b) The date the household must file an application for recertification to receive uninterrupted benefits.

(c) That the household must appear for an interview scheduled on or after the application is timely filed in order to receive uninterrupted benefits.

(d) That the household is responsible for rescheduling any missed interview.

(e) That the household must complete the interview and provide all required verification to receive uninterrupted benefits.

(f) The number of days the household has for submitting missing verification if the household is informed at the interview of any further verification needed to receive uninterrupted benefits.

(g) The household's right to request and submit an application as long as it is signed and dated.

(h) The address of the office where the application must be filed.

(i) The consequences of failure to comply with the notice of expiration.

(j) The household's right to file the application by mail or through an authorized representative.

(k) The household's right to request a state hearing.

(§63-504.253)

201-12
Counties shall initiate collection action by providing the FS household or the sponsor of an alien household an initial notice of action to begin collection action and requesting repayment. The due date or time frame for repayment must be no later than 30 days after the date of the initial notice of action, and shall provide the following information:

(a) The amount owed, the type (IPV, IHE, or AE) and reason for the claim, the period of time the claim covers, how the claim was calculated, any offsetting that was

done to reduce the claim, how the household or its sponsor may pay the claim, the household's or the sponsor's right to a state hearing if the household or the sponsor disagrees with the amount of the claim, and that the household has 90 days to request a state hearing.

(b) If the household already has had a state hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the state hearing, the household shall be advised that it has no right to another state hearing on the amount of the claim.

(c) If there is an individual or organization that will provide free legal representation, the household shall be advised of the availability of these services.

(d) The household, or the sponsor shall be informed of the length of time the household has to decide which method of repayment it will choose and inform the county of its decision, and of the fact that the household's allotment will be reduced if the household fails to agree to make restitution.

(e) (Reserved)

(f) Claim collection will be from all adults who were in the household when the overissuance occurred.

(g) The household has the opportunity to inspect and copy any records related to the claim.

(h) If the claim is not paid, it may be sent to other collection agencies that may use various methods to collect the claim.

(i) If not paid, the claim will be referred to the federal government for collection. However, the household may make a written agreement to pay the claim amount prior to referral for Federal action.

(j) If the claim is not received by the due date and becomes delinquent, the household may be subject to additional processing charges and will be subject to involuntary collection action(s).

(k) A due date or time frame to repay or make arrangements to repay the claim, unless the CWD will impose an allotment reduction. (If allotment reduction is to be imposed, the percentage to be used and effective date must be stated.)

(l) Any household or sponsor against which the county has initiated collection action shall be informed of the right to request renegotiation of any repayment schedule to which the household or the sponsor has agreed if economic circumstances change.

(1) A change in economic circumstances includes, but is not limited to, changes in income, resources, or expenses. A change in household allotment shall not constitute a change in economic circumstances.

(§63-801.431, as revised effective August 10, 2001)

201-12A
Prior to August 10, 2001, the following notice requirements existed:

The county shall initiate collection action by providing the household or the sponsor of an alien household with a Notice of Action requesting repayment which includes the following information:

(a) The amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household or its sponsor may pay the claim, and the household's or sponsor's right to a state hearing.

(b) If the household already has had a state hearing on the amount of the claim as a result of consolidation of the ADH and state hearing, that the household has no right to another state hearing on the amount of the claim.

(c) If free legal representation is available, the fact that it is available. Under federal regulations, the notice must also advise the household of any individual or organization which provides this free representation.

(d) For inadvertent household error and IPV claims, the length of time the household or sponsor has to decide which method of repayment it will choose and inform the county of its decision, and the fact that the household's allotment will be reduced if there is a failure to agree to make restitution.

(e) For administrative error claims, the availability of allotment reduction as a method of repayment if the household prefers this method.

(f) The right to request renegotiation of any repayment schedule should economic circumstances change.

(§63-801.431, revised effective August 10, 2001; 7 Code of Federal Regulations §273.18(d)(3)(ii))

201-14
Effective January 1, 1990, all CalWORKs (formerly AFDC) notices of action concerning overpayments, or FS notices of action concerning overissuances, must include substantially the following language:

WARNING: If you think this overpayment is wrong, this is your last chance to ask for a hearing. The back of this page tells how. If you stay on aid, the county can collect an AFDC overpayment by lowering your monthly grant. It can lower your food stamps to collect an overissuance unless it was the county's fault. If you go off aid before the overpayment or overissuance is paid back, the county may take what you owe out of your state income tax refund. (*Anderson* v. *McMahon*, Alameda County Superior Court, Case No. 620039-4; All-County Letter No. 90-14, February 9, 1990)

201-15
States must include the following information in the initial FS overissuance demand letter or notice of adverse action:

(A) The amount of the claim.

(B) The intent to collect from all adults in the household when the overpayment occurred.

(C) The type (IPV, IHE, AE or similar language) and reason for the claim.

(D) The time period associated with the claim.

(E) How the claim was calculated.

(F) The phone number to call for more information about the claim.

(G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.

(H) The opportunity to inspect and copy records related to the claim.

(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.

(J) That, if not paid, the claim will be referred to the Federal government for federal collection action.

(K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.

(L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.

(M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.

(N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.

(O) If allotment reduction is to be imposed, the percentage to be used and the effective date.

(7 Code of Federal Regulations (CFR) §273.18(e)(3)(iv), as revised effective August 1, 2000)

203-1
When a fair hearing decision regarding an alleged FS overissuance is going to be issued, federal regulations require the following:

(i) A claim awaiting a fair hearing decision must not be considered delinquent.

(ii) If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The language to be used in this notice is left up to the State agency. The demand for payment may be combined with the notice of the hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.

(iii) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with 7 Code of Federal Regulations (CFR) §273.18(e)(8).

(7 CFR §273.18(e)(6))

209-1
The Director of the Department of Social Services was precluded by the doctrine of equitable estoppel from denying retroactive benefits to a recipient of Aid to the Totally Disabled for payment of Social Security on behalf of her provider of attendant care. That request for relief would otherwise have been barred by the statute of limitations. (*Canfield* v. *Prod* (1977) 67 Cal.App.3d 722, 137 Cal. Rptr. 27)

This case contains a thorough discussion of the doctrine of equitable estoppel and its application to government agencies. The decision notes first that four basic elements must be present in order to apply the doctrine of equitable estoppel:

(1) The party to be estopped must be apprised of the facts;

(2) The party must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;

(3) The other party must be ignorant of the true state of facts; and

(4) The other party must rely on the conduct to his injury.

Additionally, in regard to the estoppel of government agencies, the case held that application of estoppel will be applied when justice and right require it but that an estoppel will not be applied when to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. Further, in determining whether estoppel is applicable to a government agency, the more culpable or negligent the agency or its representatives have been, and the more serious the effect of the advice on the claimant, the more likely the doctrine is to be applied.

(*Canfield* v. *Prod*, *supra*; see also *City of Long Beach* v. *Mansell* (1970) 3 Cal. 3d 462)

209-1A
In the *Canfield* case cited above, the Court of Appeal analyzed each of the elements of equitable estoppel as that doctrine was applied in this specific case against the Department of Benefit Payments. The court stated:

> "In the instant case, the Director, through his agent the County, was apprised of the facts. He recognizes that during the period in question the County had the responsibility of informing recipients of their duty to pay social security taxes for household employees and that Canfield was entitled to receive a larger grant in 1969 and 1970 because of such liability. We observe that the requirement that a party must be apprised of the facts encompasses not only actual knowledge but to conduct consisting of silence and acquiescence where the party ought to have known the real facts or where ignorance of such facts was occasioned by culpable negligence. (See *City of Long Beach* v. *Mansell*, 3 Cal.3d 462, 491, fn. 28, 91 Cal.Rptr. 23, 476 P.2d 423.)
>
> "It is further concluded that the facts of this case satisfy the second requirement, i.e., that the party to be estopped must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended. There is no question but that the County intended that Canfield would rely on its conduct. Subdivision (c) of [Welfare and Institutions Code] section 11004 provides: 'Any person who makes full and complete disclosure of those facts as explained to him pursuant to subdivision (a) is entitled to rely upon the award of aid as being accurate, and that the warrant he receives currently reflects the award made, ….' Subdivision (a) provides: 'Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his responsibility for reporting facts material to a correct determination of eligibility and grant.'
>
> "Adverting to the third requirement, we observe that there is no question that Canfield was ignorant of the true facts, i.e., that she was obligated to pay social security taxes as an employer and that she was eligible to receive a grant of

additional sums in order to pay such taxes. Nor is there any question that the fourth requirement is satisfied, i.e., that she relied on the County's conduct to her injury.

"With respect to the application of equitable estoppel to the government the established rule is that the doctrine may be applied against the government where justice and right require it, but that an estoppel will not be so applied if to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. (*City of Long Beach* v. *Mansell*, *supra*, 3 Cal.3d 462, 493, 91 Cal.Rptr. 23, 476 P.2d 423.) Although we are not privy to the legislative intent in enacting subdivision (g) of section 11004, we do not perceive that the statute is declarative of a strong rule of policy adopted for the benefit of the public. We may speculate that the statute was enacted to prevent a recipient from receiving a windfall in the sum of a lump sum payment not related to the present needs of the recipient. Such a contention was rejected in *Bd. of Soc. Welfare* v. *County of L.A.*, *supra*, 27 Cal.2d 81, 85-86, 162 P.2d 630, wherein it was held that the obligation to pay benefits becomes a debt due from the county to the applicant as of the date the latter was entitled to receive the aid. The reviewing court pointed out that the clear public purpose is to secure to those entitled to aid the full payment thereof from the date they were entitled thereto regardless of errors or delays by local authorities. (At p. 86, 162 P.2d 630.)

"We observe that section 10000 provides that the purpose of public social services is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, ….' We apprehend that Canfield's receipt of retroactive payments directly relate to her present needs in view of the tax lien on her home and the possibility of a loss of that home to satisfy the lien. Accordingly, we do not perceive that the raising of an estoppel will result in a significant frustration of public policy but that to apply the doctrine of equitable estoppel in the present case is required by justice and right and is in keeping with the declared paramount public purpose of providing protection, care and assistance to those in need.

"We observe, further, that in determining whether an estoppel may be raised against a public agency an important consideration is the degree of 'culpability or negligence of the public agency or its representatives in their conduct or advice' and 'the seriousness of the impact or effect of such conduct or advice on the claimant.' (*Driscoll* v. *City of Los Angeles*, *supra*, 67 Cal.2d 297, 306, 61 Cal.Rptr. 661, 667, 431 P.2d 245, 251) In the instant case Canfield was a person who purported to have no knowledge or training which would aid her in determining her rights. The public agency, on the other hand, purported to be informed and knowledgeable with respect to attendant care grants and the obligations of the recipient of such grants.

> "There existed a confidential relationship between the County and Canfield entitling Canfield to repose trust and confidence in the County whose representatives were cognizant of this fact. (See *Driscoll* v. *City of Los Angeles*, *supra*, at p. 308, 81 Cal.Rptr. 661, 431 P.2d245; *Vai* v. *Bank of America* 56 Cal.2d 329, 338, 15 Cal.Rptr. 71, 364 P.2d 247.) Under these circumstances the conduct of the public agency may be deemed to have been unreasonable and to have had a serious impact or effect on Canfield.
>
> "It is concluded, therefore, that the Director was estopped to assert the provisions of subdivision (g) of section 11004."

(*Canfield* v. *Prod* (1977) 67 Cal.App.3d 722 at 730-733)

In the *Canfield* case cited above, the Court of Appeal analyzed each of the elements of equitable estoppel as that doctrine was applied in this specific case against the Department of Benefit Payments. The court stated:

> "In the instant case, the Director, through his agent the County, was apprised of the facts. He recognizes that during the period in question the County had the responsibility of informing recipients of their duty to pay social security taxes for household employees and that Canfield was entitled to receive a larger grant in 1969 and 1970 because of such liability. We observe that the requirement that a party must be apprised of the facts encompasses not only actual knowledge but to conduct consisting of silence and acquiescence where the party ought to have known the real facts or where ignorance of such facts was occasioned by culpable negligence. (See *City of Long Beach* v. *Mansell*, 3 Cal.3d 462, 491, fn. 28, 91 Cal.Rptr. 23, 476 P.2d 423.)
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> "It is further concluded that the facts of this case satisfy the second requirement, i.e., that the party to be estopped must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended. There is no question but that the County intended that Canfield would rely on its conduct. Subdivision (c) of [Welfare and Institutions Code] section 11004 provides: 'Any person who makes full and complete disclosure of those facts as explained to him pursuant to subdivision (a) is entitled to rely upon the award of aid as being accurate, and that the warrant he receives currently reflects the award made, ….' Subdivision (a) provides: 'Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his responsibility for reporting facts material to a correct determination of eligibility and grant.'
>
> "Adverting to the third requirement, we observe that there is no question that Canfield was ignorant of the true facts, i.e., that she was obligated to pay social security taxes as an employer and that she was eligible to receive a grant of additional sums in order to pay such taxes. Nor is there any question that the

fourth requirement is satisfied, i.e., that she relied on the County's conduct to her injury.

"With respect to the application of equitable estoppel to the government the established rule is that the doctrine may be applied against the government where justice and right require it, but that an estoppel will not be so applied if to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. (*City of Long Beach* v. *Mansell*, *supra*, 3 Cal.3d 462, 493, 91 Cal.Rptr. 23, 476 P.2d 423.) Although we are not privy to the legislative intent in enacting subdivision (g) of section 11004, we do not perceive that the statute is declarative of a strong rule of policy adopted for the benefit of the public. We may speculate that the statute was enacted to prevent a recipient from receiving a windfall in the sum of a lump sum payment not related to the present needs of the recipient. Such a contention was rejected in *Bd. of Soc. Welfare* v. *County of L.A.*, *supra*, 27 Cal.2d 81, 85-86, 162 P.2d 630, wherein it was held that the obligation to pay benefits becomes a debt due from the county to the applicant as of the date the latter was entitled to receive the aid. The reviewing court pointed out that the clear public purpose is to secure to those entitled to aid the full payment thereof from the date they were entitled thereto regardless of errors or delays by local authorities. (At p. 86, 162 P.2d 630.)

"We observe that section 10000 provides that the purpose of public social services is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, ….' We apprehend that Canfield's receipt of retroactive payments directly relate to her present needs in view of the tax lien on her home and the possibility of a loss of that home to satisfy the lien. Accordingly, we do not perceive that the raising of an estoppel will result in a significant frustration of public policy but that to apply the doctrine of equitable estoppel in the present case is required by justice and right and is in keeping with the declared paramount public purpose of providing protection, care and assistance to those in need.

"We observe, further, that in determining whether an estoppel may be raised against a public agency an important consideration is the degree of 'culpability or negligence of the public agency or its representatives in their conduct or advice' and 'the seriousness of the impact or effect of such conduct or advice on the claimant.' (*Driscoll* v. *City of Los Angeles*, *supra*, 67 Cal.2d 297, 306, 61 Cal.Rptr. 661, 667, 431 P.2d 245, 251) In the instant case Canfield was a person who purported to have no knowledge or training which would aid her in determining her rights. The public agency, on the other hand, purported to be informed and knowledgeable with respect to attendant care grants and the obligations of the recipient of such grants.

> "There existed a confidential relationship between the County and Canfield entitling Canfield to repose trust and confidence in the County whose representatives were cognizant of this fact. (See *Driscoll* v. *City of Los Angeles*, *supra*, at p. 308, 81 Cal.Rptr. 661, 431 P.2d245; *Vai* v. *Bank of America* 56 Cal.2d 329, 338, 15 Cal.Rptr. 71, 364 P.2d 247.) Under these circumstances the conduct of the public agency may be deemed to have been unreasonable and to have had a serious impact or effect on Canfield.
>
> "It is concluded, therefore, that the Director was estopped to assert the provisions of subdivision (g) of section 11004."

(*Canfield* v. *Prod* (1977) 67 Cal.App.3d 722 at 730-733)

209-3
The California Supreme Court stated, in dicta, that no court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations. (*Longshore* v. *County of Ventura* (1979), 25 Cal.3d 14, 157 Cal. Rptr. 706, 598 P.2d 866)

209-4
The Sacramento County Superior Court ordered the CDSS to apply the doctrine of equitable estoppel, as warranted, when FS recipients had been overissued benefits due to administrative error, and the county attempted to collect the overissuance. The Court denied CDSS' claims that application of the doctrine of equitable estoppel was inappropriate because FS is a wholly federally funded program, and because *Office of Personnel Management* v. *Richmond* (1990) 496 U.S. 414, precluded the relief sought. The CDSS appealed this determination. (*Vang* v. *Healy*, Sacramento County Superior Court, No. 370072, Memorandum and Order, April 5, 1993)

This Superior Court determination was reversed in an unpublished decision by the Court of Appeals. (*Vang* v. *Saenz*, No. C016270, March 20, 2002)

209-5
When the county has computed a CalWORKs (formerly AFDC) administrative error overpayment, the Judge may consider the amount of FS benefits the claimant would have received if the county had issued the correct CalWORKs payment rather than the overpaid CalWORKs. If this computation results in a larger FS allotment than the claimant actually received, the Judge may instruct the county to reduce the CalWORKs overpayment by the amount of the increased FS allotment.

Under equitable estoppel, the lost FS benefits are a measure of the injury which the claimant suffered due to the county error.

(All-County Information Notice I-60-96, November 26, 1996)

209-6
A notice of action must be adequate before the 90-day time limit for filing a state hearing request begins to run. The fact that the recipient knows, or should have known, of the action does not start the running of the time period. (*Morales* v. *McMahon* (1990), 223 Cal. App. 3d 184, 272 Cal. Rptr. 688)

209-7
On December 20, 1994 and March 21, 1995, "Notes from the Training Bureau", Items 94-12-2 and 94-12-2a, respectively was issued to all Administrative Law Judges (judges) who conduct hearings for the California Department of Social Services (CDSS). These Notes set forth guidelines for handling equitable estoppel cases. As long as these guidelines were followed, the judges were authorized to write "final" decisions, rather than "proposed" decisions.

Pursuant to an agreement signed by named plaintiffs Rush and their attorneys, and the CDSS, which agreement was approved by the Sacramento County Superior Court, the CDSS agreed to delete certain portions of the Notes referred to above, and to inform the judges of the terms of the settlement. Specifically, the following changes and deletions were to be made to the Notes.

"a. The first full paragraph on page 1, is hereby deleted. That paragraph stated 'This memo sets forth the general guidelines which CDSS believes are appropriate in decisions involving the claim of equitable estoppel. Judges who write decisions in accord with these guidelines may write final decisions. Failure to adhere to these guidelines will require the judge to write a proposed decision.'

"b. The third paragraph under the heading 'ELEMENT 4' on page 3, which currently states 'There are three ways in which detrimental reliance can be established. They are as follows:' is hereby changed to 'Three ways in which detrimental reliance can be established are:'.

"c. The paragraph above the heading 'ELEMENT 5' on page 6, is hereby deleted. That paragraph stated 'In all other overpayment cases, where the claimant's only contention is that he cannot afford to repay the overpayment, this element of estoppel is not met. That is, the fact that the individual has to repay an overpayment caused by county error alone does not satisfy the fourth element of estoppel. Incurring the debt does not, of itself, constitute injury. If the claimant's only contention of injury is the inability to repay the overpayment, the case should be denied without further analysis at this step.'

"d. The paragraph labeled 4 on page 8 is hereby deleted. That paragraph stated: 'Hardship in repaying an overpayment or overissuance is not evaluated under the 4th element, but under the 5th element, i.e. balancing.'"

(*Rush* v. *Saenz*, Class Action Judgment No. 97CS01014, Sacramento County Superior Court, December 12, 2000, Stipulation No. 1)

209-8
In discussing whether equitable estoppel could be applied against public agencies, the Appellate Courts have offered the following guidelines:

> "The courts of this state have been careful to apply the rules of estoppel against a public agency only in those special cases where the interests of justice clearly require it. [citations omitted] However, if such exceptional case does arise and if the ends of justice clearly demand it, estoppel can and will be applied even against a public agency. Of course, the facts upon which such an estoppel must rest go beyond the ordinary principles of estoppel and each case must be examined carefully and rigidly to be sure that a precedent is not established through which, by favoritism or otherwise, the public interest may be mulcted [defrauded, swindled] or public policy defeated. [citations omitted]." *City of Imperial Beach* v. *Algert* (1962) 200 Cal.App.2d 48, 52)

> "Factors to be considered in a claim of estoppel against a public agency include consideration of the degree of negligence or culpability of the public agency (*Driscoll* v. *City of Los Angeles* (1967) 67 Cal.2d 297, 307), whether and to what extent the agency is certain of the knowledge or information it dispenses (see *Phillis* v. *City of Santa Barbara* (1967) 229 Cal.App.2d 45, 60), whether it purports to advise and direct or merely to inform and respond to inquiries (see *Tyra* v. *Board of Police etc. Commrs*. (1948) 32 Cal.2d 666, 670), and whether it acts in bad faith. (See *Lorenson* v. *City of Los Angeles* (1953) 41 Cal.2d 334, 340)." (*Lee* v. *Board of Administration* (1982) 130 Cal.App.3d 122, 134)

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The Court of Appeals , in *Crumpler* v. *Board of Administration Emp. Retire. Sys*.,relied on the Supreme Court as to the manner of applying equitable estoppel against the government. The *Crumpler* court cited *City of Long Beach* v. *Mansell*, 3 Cal.3d 462, 91 Cal.Rptr. 23, 476 P.2d 423.

> "The court there declared it to be settled that '[tlhe doctrine of equitable estoppel may be applied against the government where justice and right require it' but that an estoppel will not be applied against the government if to do so would effectively nullify 'a, strong rule of policy, adopted for the benefit of the public…' (At p. 493, 91 Cal.Rptr. at p. 45, 476 P.2d at P. 445.) The court observed that '[t]he tension between these twin principles makes up the doctrinal context in which concrete cases are decided.' After a review of a number of cases the court phrased the rule governing the application of equitable estoppel against the government as follows:' … The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or

policy which would result from the raising of an estoppel" (See *Crumpler* v. *Board of Administration Emp. Retire. Sys*. (1973) 32 Cal.App.3d 578, 580)

The *Crumpler* court went on to analyze whether equitable estoppel should be applied to prevent the retroactive reclassification of plaintiffs, animal control officers:

"All of the requisite elements of equitable estoppel are present insofar as the city is concerned. The city was apprised of the facts. The city knew that petitioners were being employed by the police department as animal control officers at the time it erroneously advised them they would be entitled to retirement benefits as local safety members. The fact that the advice may have been given in good faith does not preclude the application of estoppel. Good faith conducts of a public officer or employee does not excuse inaccurate information negligently given. (*Driscoll* v. *City of Los Angeles*, *supra*, 67 Cal.2d 297, 307-308, 61 Cal.Rptr. 661, 431 P.2d 245; *Orinda-County Fire Protection Dist*. v. *Frederickson and Watson Co*., 174 Cal.App.2d 589, 593, 344 P.2d 873.) 'In a matter as important to the welfare of a public employee as his pension rights, the employing public agency 'bears a more stringent duty' to desist from giving misleading advice.' (*Driscoll* v. *County of Los Angeles, supra*, 67 Cal.2d 297, 308, 61 Cal.Rptr. 661, 431 P.2d 245.) In the instant case the erroneous representations that petitioners would be entitled to local safety memberships if they accepted city employment was given without verifying its accuracy either by advice from the board or any other qualified person.

"All of the other requisite elements of equitable estoppel against the city were established by uncontradicted evidence. The city manifestly intended its erroneous representations to be acted upon and petitioners relied upon the representations to their injury by relinquishing other employment to accept city employment and by paying over the years the greater contributions required of safety members. Petitioner Crumpler served as animal control officer for over 20 years. During those years he paid safety member contributions and arranged his personal financial affairs in the expectation he would ultimately receive the retirement benefits of a safety member. Petitioner Ingold relinquished federal civil service employment with 15 years accrued federal pension rights to accept city employment on the representation that his city pension rights would be that of a safety member.

"The board virtually concedes the city would be estopped but urges that estoppel may not be invoked against the board because it had no knowledge that petitioners were employed as animal control officers and not policemen until a routine investigation in 1968 revealed the true facts. We reject the board's position.

"The relationship between the city and the board is such that estoppel of the city is binding on the board. An estoppel binds not only the immediate parties to the

> transaction but those in privity with them. [citations omitted]... (*Crumpler*, supra, 32 Cal.App.3d at 581, 582)
>
> "Petitioners' contention that the board is forever precluded from reclassifying them because they have a vested right to be classified as local safety members is devoid of merit. It is true that upon acceptance of public employment provisions of the applicable pension law become an integral part of the contract of employment, and that any modifications affecting earned pension rights of active employees must be reasonable, related to the theory of a sound pension system, and any changes detrimental to the individual must be offset by comparable new advantages. However, correction of an erroneous classification cannot be equated to a modification or alteration of earned pension rights. Petitioners have no vested right in an erroneous classification. Indeed, as we have noted, the act expressly provides for correction of errors such as occurred in the instant case. The provisions of section 20180 being as much a part of the contract of employment as other provisions of the retirement act, exercise of the power conferred by the section involves no violation or impairment of petitioners' contractual or vested rights.
>
> "It is our conclusion that the board is estopped from reclassifying petitioners for the period of membership prior to the board's decision of August 18, 1971, but is not so estopped from reclassifying petitioners to miscellaneous membership prospectively from the date of that decision."

(*Crumpler*, supra, 32 Cal.App.3d at 585)

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The California Court of Appeal, Third District, discussed the doctrine of "laches" in the case of *Lam* v. *Bureau of Security and Investigation Services*:

> "Statutes of limitation and the doctrine of laches are both designed 'to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'" [Citations.]' (*Brown*, *supra*, 166 Cal.App.3d at p. 1161.) These policies also guard against other injuries caused by a change of position during a delay. While a statute of limitations bars proceedings without proof of prejudice, laches "requires proof of delay which results in prejudice or change of position." (Ibid.) Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. (Id. at p. 1159.) What makes the delay unreasonable in the case of laches is that it results in prejudice. (Ibid.)"

(*Lam, supra*, 34 Cal.App. 4th 29, 36-37)

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In an unpublished opinion by the Court of Appeals (*Vang* v. *Saenz*) the Court denied petitioner's claim that equitable estoppel should be applied to preclude the county from recovering FS overissuances which were caused by administrative error. The Appeals Court relied primarily on the U.S. Supreme Court's analysis in *OPM* v. *Richmond*.

In the *OPM* case, the Supreme Court concluded that equitable estoppel cannot be applied against the government where to do so would result in the payment of benefits not authorized by Congress.

The Supreme Court stated in *OPM* as follows:

> "Whether there are any extreme circumstances that might support estoppel in a case not involving payment from the Treasury is a matter we need not address. As for monetary claims, it is enough to say that this Court has never upheld an assertion of estoppel against the Government by a claimant seeking public funds. In this context there can be no estoppel, for courts cannot estop the constitution."

(*OPM* v. *Richmond* (1990) 496 U.S. 414, 434)